

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
HOSPITAL CENTRAL SERVICES
ASSOCIATION,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 85-72

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of a civil penalty of \$1000 for the alleged violation of Puget Sound Air Pollution Control Agency, Regulation I, Section 9.11(a), came on for formal hearing in Seattle on September 19, 1985, before the Pollution Control Hearings Board, Wick Dufford (presiding) and Lawrence J. Faulk.

Appellant, Hospital Central Services Association was represented by its general manager, Paul Berger. Respondent, Puget Sound Air Pollution Control Agency (PSAPCA) was represented by its attorney Keith D. McGoffin.

1 Witnesses were sworn and testified. Exhibits were examined. From
2 the testimony heard and exhibits examined, the Board makes these

3 FINDINGS OF FACT

4 I

5 Appellant Hospital Central is a laundry located at 1300 East
6 Columbia in Seattle and operated by six of the city's hospitals. It
7 is the largest hospital laundry in the state providing services for
8 approximately 2,300 beds. The massive cleaning operation produces a
9 huge quantity of lint - enough to fill fourteen or fifteen 55 gallon
10 drums per day.

11 II

12 Respondent PSAPCA is a municipal corporation with the
13 responsibility for conducting a program of air pollution prevention
14 and control in a multi-county area which includes the site of
15 appellant's laundry.

16 PSAPCA, pursuant to RCW 43.21B.260 has filed with this Board a
17 certified copy of its Regulation I, which is noticed.

18 III

19 Mr. and Mrs. David Holt and their young child live in a home at
20 824 13th Avenue in Seattle, adjacent to the Hospital Central laundry
21 on the north. On Saturday, February 23, 1985, in the late afternoon,
22 Mr. Holt arrived home to discover that lint was scattered across his
23 yard and porch. He felt the amount of lint was significant. He
24 thought it greatly affected the appearance of his property. He didn't
25 like it. He complained to PSAPCA.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER
PCHB No. 85-72

IV

On Monday morning, February 25, 1985, PSAPCA's inspector arrived at the Holt's residence. The lint had not yet been cleaned up. The inspector took pictures.

He contacted the agency's technical services division and found that on February 23, 1985, the prevailing wind direction was from the south. He recalled weather conditions over the weekend: Saturday had been dry and overcast; Sunday had morning showers and afternoon sun.

V

PSAPCA's inspector proceeded to appellant's laundry and contacted Paul Berger, the general manager. The two went to the roof of the facility and observed conditions there. Near two of the lint filters, small piles of soggy lint had accumulated. In another location there was a white mat of wet lint. Some fugitive lint was blown across the inspector's feet as he looked around.

He did not observe lint coming from any of the filters, though all of them were in operation. He did however, observe that the lint on the roof was similar in size distribution, color and composition to that he had observed on the Holt's property.

No other laundries are located in the immediate vicinity.

VI

The laundry maintains an advanced lint control system, through which lint is carried from the laundry's dryers in hot air to filters installed on the roof. The hot air is recirculated, but the lint is trapped on the filters. Lint is shaken from the filters into drums

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PCHB No. 85-72

1 and from thence is removed manually in plastic bags.

2 On February 23, 1985, an employee of the laundry dropped a bag of
3 lint, and the contents spilled out on the roof. He failed to pick up
4 the spilled lint.

5 VII

6 We find that the lint deposited on the Holt's property came from
7 appellant's laundry. The cause of the problem was not a mechanical
8 malfunction. Rather it appears to have been the result of human error
9 a failure to keep the laundry roof adequately clear of lint which
10 escaped during the bag changing and emptying process.

11 VIII

12 The employee who dropped the bag is no longer with the laundry. A
13 preventive maintenance program has been instituted. Lint bags are
14 changed twice a day. Employees are instructed in how to change them
15 without allowing lint to escape. The filters (both primary and
16 secondary) are visually inspected twice daily to insure there is no
17 problem of lint escaping directly from the filter units. The roof is
18 cleaned weekly.

19 IX

20 The event at issue occurred prior to a hearing before this Board
21 in March of 1985 concerning earlier lint fallout episodes involving
22 the laundry and the Holt property. Since that hearing, the Holts have
23 made no further complaints.

24 X

25 The laundry and the Holts have been at odds over lint for some

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER
PCHB No. 85-72

1 time. The history of prior enforcement is summarized in Hospital
2 Central Services Assn. v. PSAPCA, PCHB No. 84-329.

3 XI

4 Mr. Berger attempted to show a pattern of discriminatory
5 enforcement, wherein the laundry has been treated differently than
6 other similarly situated pollution sources. However, he failed to
7 prove anything of the kind. He had asked the agency to produce
8 information from its files and witnesses to testify regarding such
9 information. However, he did not serve any subpoenas, nor otherwise
10 follow formal procedure for pre-trial discovery. The agency declined
11 to provide the requested data and witnesses voluntarily.

12 XII

13 Appellant's notice of appeal explains the incident of February 23,
14 1985, but does not contest its occurrence factually. Moreover, the
15 notice of appeal states that appellant does not dispute that
16 "unreasonable interference" occurred.

17 We find that the event in question caused annoyance and
18 inconvenience to the Holts. However, from the photographic evidence
19 presented it is clear that the amount of lint involved was quite small.

20 XIII

21 Any Conclusion of Law which is deemed a Finding of Fact is hereby
22 adopted as such.

23 From these Findings of Fact the Board comes to these
24
25

1 CONCLUSIONS OF LAW

2 I

3 The Board has jurisdiction over these parties and these matters.
4 Chapters 43.21B and 70.94 RCW.

5 II

6 PSAPCA Regulation I, Section 9.11(a) states:

7 It shall be unlawful for any person to cause or
8 allow the emission of an air contaminant in
9 sufficient quantities and of such characteristics
10 and duration as is, or is likely to be, injurious
11 to human health, plant or animal life, or property,
12 or which unreasonably interferes with the enjoyment
13 of life and property.

11 III

12 We conclude that emissions of lint caused by Hospital Central
13 Services Association, had such effects on persons and property on
14 February 23, 1985, as to unreasonably interfere with the enjoyment of
15 life and property in violation of Section 9.11(a).

16 However, we note that there is, under the regulation, a certain
17 level of "reasonable" neighborly interference which must be
18 tolerated. Not every fleck of lint entitles the Holts to redress of
19 their grievances through the services of PSAPCA. Under the evidence,
20 this case is very near the borderline.

21 IV

22 The notice of penalty asserts violations of both Section 9.11(a)
23 and WAC 173-400-040(5). Since we decide that Section 9.11(a) was
24 violated, we need not consider WAC 173-400-040(5).
25

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER
PCHB No. 85-72

V

The Washington Clean Air Act, chapter 70.94 RCW, is a strict liability statute. Explanations do not operate to excuse violations of regulations adopted under its authority. Air contaminant sources are required to conform to such regulations.

However, the surrounding facts and circumstances are relevant to assessing the propriety of the amount of a civil penalty. Factors bearing on the reasonableness of the fine must be considered. These include:

- (a) the nature of the violation;
- (b) the prior behavior of the violator; and
- (c) actions taken to solve the problem.

Puget Chemco, Inc. v. PSAPCA, PCHB No. 84-245 et al.

VI

The violation in this case caused nuisance - like effects. It should however be categorized as a minor infraction.

Notwithstanding prior episodes of lint fallout, it appears that the laundry substantially has brought the problem under control. It is making a concerted effort to prevent any recurrence.

A prior penalty was, in part, affirmed by this Board in proceedings which post-dated the event in question. The object of changing the behavior of the violator has evidently been realized. No further difficulties with lint have occurred since the previous hearing. Accordingly, we believe that the maximum penalty assessed here is more than required to meet the corrective aims of the statute. These aims, which include general as well as specific

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PCHB No. 85-72

deterrence, would be adequately served by the penalty affirmed below.

VII

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law the Board enters this

ORDER

Notice and Order of Civil Penalty No. 6249, issued by PSAPCA to Hospital Central Services Association is affirmed in the amount of \$250; \$750 of the penalty is vacated.

DONE this 11th day of December, 1985.

POLLUTION CONTROL HEARINGS BOARD


WICK DUFFORD, Lawyer Member

 12/11/85
LAWRENCE J. FAULK, Chairman

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PCHB No. 85-72